SBCivil Writ Petition No.2353/1993

Moola Ram Bishnoi
Vs.
State of Rajasthan & Ors.

Date of Order :: 7th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By SBCivil Writ Petition No.3882/1989, Moolaram Bishnoi v. State of Rajasthan & Ors., the petitioner claimed for following reliefs:-

> "(i)that by an appropriate writ, order or direction, the impugned orders Annexure-P/5 dated 5/8/1988, Annexure-P/8 dated 3/1/89 and Annexure-P/11 dated 14/8/1989 may be quashed with all consequential reliefs and benefits to the petitioner as if these orders were never passed and served upon the petitioner.
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> (ii)that by an appropriate writ, order or direction, the respondents may be directed to treat the petitioner in continuous service and the order of dismissal may be treated as null and void with all consequential benefits and reliefs, as if the same was never passed and issued to the petitioner, together with interest at the rate of Rs.18% per annum on the arrears of salary to the petitioner."

By order dated 12.12.1990 the writ petition aforesaid came to be dismissed by this Court being withdrawn with liberty to file fresh petition for writ. The order dated 12.12.1990 reads as under:-

> "Mr.Lal submits that he wants to withdraw the writ petition with liberty to file fresh writ petition if so advised.
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> Writ petition is dismissed as withdrawn with liberty to file fresh writ petition is so advised."

After withdrawal of SBCivil Writ Petition No.3882/1989 the petitioner presented the instant petition for writ before this Court on 23.1.1991 for the same reliefs as prayed in SBCivil Writ Petition No.3882/1989.

A very minor defect was pointed out by the registry on 23.1.1991 but it was not removed by the petitioner for a period of more than two years. The writ petition ultimately came to be admitted for hearing on 9.1.1998 and thereafter came up for hearing before this Court. I have examined record of the instant petition for writ and of writ petition No.3882/1989. Both the writ petitions bear exactly same facts, grounds and reliefs. The only reason given by the petitioner to file the present writ petition after dismissal of SBCivil Writ Petition No.3882/1989 is that he came to know that the matter with regard to

his termination was considered afresh and the same was negatived by Zila Parishad. No such decision of Zila Parishad is placed on record by the petitioner. Considering these facts this Court on 3.8.2005 passed an order in following terms:-

> "The present petitioner at the first instance preferred a writ petition before this Court giving challenge to the order impugned Annexure-5 dated 5.8.1988. The said writ petition was registered as SBCWP No.3882/1989 and the same was withdrawn by the petitioner on 12.12.1990 with liberty to file fresh writ petition.
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> After withdrawal of the writ petition, fresh writ petition was filed by the petitioner on 23.1.1991. The writ petition remained in defect category for year together. Ultimately, notices were issued by this Court to the respondents to show cause as to why the writ petition be not admitted on 14.5.1992. The petitioner has stated in para 1 of the writ petition that he withdrew the writ petition as he came to know that his matter was under consideration before the Zila Parishad on his representation. The petitioner has nowhere stated in the petition that who assured on behalf of the Zila Parishad for reconsidering his case afresh and when such procedure for reconsideration if any taken place, reach to an end giving cause to the petitioner to file the petition afresh. It is true that a liberty was given to the petitioner to file a fresh petition while permitting the

> petitioner to withdraw the writ petition No.3882/89, but it does not give a blanket right to him to file a fresh petition without any sufficient change in circumstances. I failed to see any sufficient change in the circumstances prompting the petitioner to file fresh petition for same cause. Shri P.P.Choudhary, counsel for the petitioner has submitted that when the petitioner came to know that Zila Parishad was not taking any positive decision in the matter, he left with no option but to file a fresh writ petition.
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> Learned counsel for the petitioner wants ten days time to file additional affidavit along with a copy of the representation which was submitted by him before Zila Parishad for reconsideration of his case with regard to the order impugned Annexure-5. He also wants to give a specific statement by way of affidavit with regard to the facts and circumstances which gave a cause to the petitioner to file the present writ petition."

In pursuant to the order dated 3.8.2005 the petitioner filed an additional affidavit stating therein that after dismissal of his service he submitted a representation to the Chief Executive Officer of Zila Parishad, Jodhpur but when no reply was received he again filed a representation on 24.4.1989. The Zila Parishad then by letter dated 9.1.1991 communicated that nothing can be done in the case of the petitioner. A copy of the letter dated 9.1.1991 is

also placed on record. In fact the letter dated 9.1.1991 is nothing but reproduction of the order dated 23.3.1989 which was already on record of SBCivil Writ Petition No.3882/1989. As a matter of fact there is no sufficient reason available on record for filing present writ petition by the petitioner after getting SBCivil Writ Petition No.3882/1989 withdrawn. It is urged by counsel for the petitioner that the writ petition No.3882/1989 was withdrawn with liberty to file fresh writ petition, therefore, the dismissal of that writ petition cannot operate as resjudicata while entertaining the instant petition for writ.

It is not the question of resjudicata but is of judicial discipline. It is true that the petitioner withdrew the writ petition with liberty to file fresh writ petition but there must be some cogent reason for withdrawal of the writ petition and also for filing a fresh writ petition for the same relief. A litigant cannot be permitted to withdraw the writ petition at his whims and then to file fresh without any just and valid reason. The liberty granted by the Court for filing fresh petition is always only to the extent of availability of just and valid reasons.The courts never grant permission to withdraw writ petition merely on asking. Such permission is always for certain reasons, may those be recorded or not. Similarly, liberty to reagitate the issue is also conditional. A party availing such liberty must give bonafide reasons in

this regard. The reason given in present case on its face is not bonafide.

It is contended by counsel for the respondents that the petitioner suffered so many criminal cases including the charges of rape and murder and, therefore, his conduct is not befitting a teacher, therefore, his services were rightly discontinued by the respondents.

Be that as it may, I am not entering into the merits of the case on the count that there was no sufficient reason for filing the present writ petition after withdrawal of writ petition No.3882/1989.

The writ petition, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.